

James Alan Bush
1745 De Marietta Avenue #3
San Jose, CA 95126
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Plaintiff in pro per

FILED

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

James Alan Bush,) Case No.: C 08-01354 (RS) JF
)
Petitioner,) PETITION FOR CLAIM AND DELIVERY
) AGAINST RESPONDENTS DONNIE DOE AND
v.) ERIC DOE
)
Donnie aka Lamont aka Lil') [Code Civ Proc. § 512.010(a)]
Mon DOE, Eric DOE, Santa Clara)
County Sheriff's Office, San Jose)
Police Department,)
)
Respondents.) Judge Jeremy Fogel
)

PETITION FOR CLAIM AND DELIVERY

Petitioner, James Alan Bush, on information, belief and established facts, by and through his own counsel of record, in *pro se*, and for his cause of action for claim and delivery against Respondents, Donnie DOE and Eric DOE, for the return of personal property and other damages, states:

1 Pursuant to Code Civ. Proc. § 512.010(a), Petitioner brings this
2 cause of action for claim and delivery [Code Civ. Proc. §§ 511.010-
3 516.050], asking this Court to order the Santa Clara County Office
4 of the Sheriff or the United States Marshall Service to seize the
5 property unlawfully detained by respondents and, based on the judicial
6 determination of this matter, Petitioner will seek an order for the
7 return of the claimed property.

8 Petitioner seeks leave to amend this petition for an award of
9 exemplary damages, pursuant to Civ. Code § 3294, depending on the
10 discovery of other, relevant facts during the course of proceedings.

11 PARTIES

- 12 1. Petitioner is a resident of the City of San Jose, County of Santa
13 Clara, State of California, residing at 1745 De Marietta Avenue #3.
- 14 2. Respondents, Donnie (aka "Lamont" aka "Lil' Mon") DOE and Eric DOE,
15 are, and at all relevant times mentioned herein were, residents of
16 the De Marietta/Southwest neighborhood, in the City of San Jose,
17 County of Santa Clara, State of California, and are being sued
18 individually.
- 19 3. The true names and capacities of respondents sued here as DOES
20 are unknown to Petitioner, who therefore sues such respondents by
21 such fictitious names, and Petitioner will seek leave to amend this
22 petition to show their true names and capacities when they are
23 ascertained or provided by the Santa Clara County Sheriff's Office or
24 the San Jose Police Department.
- 25 4. Petitioner is informed and believes, and on the basis of such
26

1 information and belief alleges, that each of the DOE respondents
2 were at all material times an agent, servant, employee, partner,
3 co-conspirator, and/or alter-ego of the San Jose Police Department
4 and/or the Santa Clara County Sheriff's Office, and in doing the
5 things here alleged, were acting within the course and scope of
6 that relationship. Petitioner is further informed and believes,
7 and on the basis of such information and belief alleges, that the
8 San Jose Police Department and/or the Santa Clara County Sheriff's
9 Office gave consent, aid, and assistance to the DOE respondents,
10 and ratified and/or authorized the acts or omissions of each DOE
11 respondent as alleged here, except as may be subsequently otherwise
12 specifically alleged.

13 9. Plaintiff is informed and believes, and on the basis of such
14 information and belief alleges, that each of the respondents
15 designated as a DOE sued here were negligently, wrongfully, and
16 otherwise legally responsible in some manner for the felonious
17 taking of the claimed property and other happenings as subsequently
18 described, and proximately caused injuries and damages to
19 Petitioner as alleged in this petition.

20 10. Respondents, State of California, Santa Clara County Sheriff's Office
21 ("SCCSO"), and San Jose Police Department ("SJPD"), were at all
22 material times responsible for the hiring, training, supervision,
23 and discipline of one or more DOE respondents.

24 11. At all material times, the acts and omissions of the DOE
25 respondents, as set forth here, were pursuant to the actual
26 customs, policies, practices, and procedures of the State of

California, and Respondents SCCSO and SJPd.

12. At all material times, each respondent was jointly engaged in tortious activity, resulting in the deprivation of petitioner's constitutional rights and other harm.

13. At all material times, each respondent acted under color of the laws, statutes, ordinances, and regulations of the State of California.

FACTUAL ALLEGATIONS

14. Petitioner is, and at all times herein mentioned was, entitled to the immediate and exclusive possession of the following personal property:

- an LG VX9800 cellular telephone;
- a case of DVDs (approx. 10 to 20), marked "Evidence" in black ink by a felt-tip marker, and followed by a date; and,
- a CaseLock-brand DVD carrying case, made of black, yellow and gray nylon, with zipper.

The property that is the subject of this petition contained evidence relevant to Petitioner's complaint, filed on March 10th, 2008.

15. Petitioner is, and at all times herein mentioned was, entitled to the immediate and exclusive possession of the personal property described above.

16. On or about the beginning of February, 2008, Respondent, Donnie DOE, took the claimed property from the petitioner's apartment.

17. The next day, both DOE respondents questioned the petitioner

1 about information stored on the claimed property, inferring the
2 possession of, or knowledge leading to the person(s) in possession
3 of, the claimed property.

4 5 **EXHAUSTION OF AVAILABLE REMEDIES**

6 18. Petitioner demanded the return of the claimed property; however,
7 the DOE respondents informed Petitioner that the property was not
8 in their possession, and declined to implicate others or indicate
9 with whom they last saw in possession of the property.

10 19. Approximately one week after the property was stolen, Petitioner
11 filed a stolen property report with Respondent SJPD; however, the
12 respondent refused, and continues to refuse, to investigate.

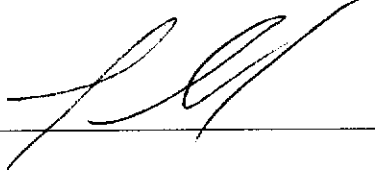
13 14 **RELIEF REQUESTED**

15 WHEREFORE, Petitioner prays for judgment in favor of the petitioner:

- 16 1. For an order, compelling Respondents, Santa Clara County Sheriff's
17 Office or San Jose Police Department, to disclose the true names
18 and addresses of the DOE respondents to the United States Marshall
19 Service and the petitioner to locate and seize the claimed
20 property, and to serve notice (if required);
- 21 2. For an order, authorizing the United States Marshall Service to
22 seize the claimed property from the DOE respondents;
- 23 3. For an order, compelling Respondents, Santa Clara County Sheriff's
24 Office or San Jose Police Department, to disclose the capacities of
25 each DOE respondent, to determine whether they acted under color
26 of law, or in concert with other state actors, for the purposes of

1 Title 42 U.S.C.S. § 1983; and,

2 4. For exemplary damages according to proof.

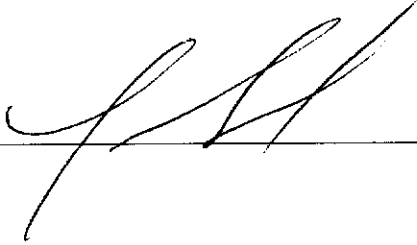
3
4 Petitioner: 

Dated: 5-24-08

5
6 **VERIFICATION**

7 I, James Alan Bush, Petitioner in the above-entitled action, have
8 read the foregoing and know the contents thereof. The same is true of
9 my own knowledge, except as to those matters that are therein alleged
10 on information and belief; and, as to those matters, I believe it to be
11 true.

12 I declare under penalty of perjury that the foregoing is true and
13 correct and that this declaration was executed in San Jose, California.

14
15 Petitioner: 

Dated: 5-24-08